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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO MENDOZA RAMOS,
LEOPOLDO GONZALEZ, JR.,
VICTOR MANUEL VELAZQUEZ,
ERASMO ZARATE SOLORZANO,
ESTELA ACEVEDO,
CARLOS CANO MANZO,
DIANA CERVANTES,
JOSE GENARO VARGAS-RAMIREZ,
ALMA ADRIANA MORA MADRIGAL,
ALEJANDRO MORA MADRIGAL,
FERNANDO CARDENAS, AND
HUMBERTO PIMENTEL CARANZA,

Defendants.

CASE NO. 21-CR-109-JAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

CURRENT DATE: March 1, 2022
PROPOSED DATE: June 7, 2022
COURT: Hon. John A. Mendez

BACKGROUND

This case is set for status conference on March 1, 2022. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.”

1 General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case
 2 exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of
 3 counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will
 4 impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous
 5 General Orders were entered to address public health concerns related to COVID-19.

6 Although the General Orders address the district-wide health concern, the Supreme Court has
 7 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 8 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 9 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 10 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 11 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 12 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 13 or in writing”).

14 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 15 and inexcusable—General Orders 611, 612, 617, 618, and other orders require specific supplementation.
 16 Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of
 17 his findings that the ends of justice served by taking such action outweigh the best interest of the public
 18 and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is
 19 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or
 20 finding that the ends of justice served by the granting of such continuance outweigh the best interests of
 21 the public and the defendant in a speedy trial.” *Id.*

22 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 23 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 24 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 25 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 26 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 27 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 28 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time

1 following the September 11, 2001 terrorist attacks and the resultant public emergency).

2 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 3 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
 4 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act
 5 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL
 6 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is
 7 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
 8 speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a
 9 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
 10 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
 11 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
 12 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

13 In light of the foregoing, this Court should consider the following case-specific facts in finding
 14 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
 15 (Local Code T4).¹ If continued, this Court should designate a new date for the status conference.
 16 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
 17 “specifically limited in time”).

18 STIPULATION

19 Plaintiff United States of America, by and through its counsel of record, and defendant
 20 LEOPOLDO GONZALES, JR. by and through his counsel of record, Ryan, Roth, defendant VICTOR
 21 MANUEL VELAZQUEZ, by and through his counsel of record, Kelly Babineau, defendant ERASMO
 22 ZARATE SOLORZANO, by and through his counsel of record, Etan Zaitso, defendant ESTELA
 23 ACEVEDO, by and through her counsel of record, Clemente M. Jimenez, defendant DIANA
 24 CERVANTES, by and through her counsel of record, Jennifer Mouzis, defendant JOSE GENARO
 25 VARGAS-RAMIREZ, by and through his counsel of record, DINA LEE SANTOS, defendant ALMA
 26 ADRIANA MORA MADRIGAL, by and through her counsel of record, Christina Ann-Marie

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 Diedoardo, defendant HUMBERTO PIMENTEL CARANZA, by and through his counsel of record,
2 Jesse Garcia, and defendant FERNANDO CARDENAS, by and through his counsel of record, Tasha
3 Chalfant, hereby stipulate as follows:

4 1. By previous order, this matter was set for status conference on March 1, 2022.

5 2. By this stipulation, defendants now move to continue the status conference until June 7,
6 2022, at 9:30 a.m., and to exclude time between March 1, 2022, and June 7, 2022, under 18 U.S.C.
7 § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4].

8 3. The parties agree and stipulate, and request that the Court find the following:

9 a) The government has produced over 100,000 pages of discovery and voluminous
10 audio and audio/video discovery, including interceptions over multiple wiretapped telephones as
11 well as recordings of controlled purchases of narcotics. Many of the recordings are in Spanish.

12 b) Counsel for defendants desire additional time to consult with their clients, review
13 the current charges, conduct investigations and research related to the charges, review discovery,
14 discuss potential resolutions, prepare pretrial motions, and otherwise prepare for trial.

15 c) Additionally, given the voluminous discovery and the fact that this case involved
16 a multi-line wiretap investigation, it is so complex that it is unreasonable to expect adequate
17 preparation for pretrial proceedings or for the trial itself prior to June 7, 2022.

18 d) Counsel for defendants believe that failure to grant the above-requested
19 continuance would deny them the reasonable time necessary for effective preparation, taking into
20 account the exercise of due diligence.

21 e) No defendant has invoked his/her speedy trial rights since the inception of the
22 case.

23 f) The government does not object to the continuance.

24 g) Based on the above-stated findings, the ends of justice served by continuing the
25 case as requested outweigh the interest of the public and the defendants in a trial within the
26 original date prescribed by the Speedy Trial Act.

27 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
28 et seq., within which trial must commence, the time period of March 1, 2022 to June 7, 2022,

inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4] because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

4. Counsel for ALMA ADRIANA MORA MADRIGAL and the government agree that for purposes of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of March 1, 2022 to June 7, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(3) because ALMA ADRIANA MORA MADRIGAL's whereabouts are unknown and her whereabouts cannot be determined by due diligence. On June 9, 2021, defendant ALMA ADRIANA MORA MADRIGAL was ordered to remain on Pretrial Release conditions previously ordered in the Central District of California. Dkt. 13. On December 21, 2021, the Honorable Jeremy D. Peterson signed a Pretrial Release Violation Petition and issued a bench warrant for ALMA ADRIANA MORA MADRIGAL. The Petition alleged that:

On December 16, 2021, the supervising pretrial services officer in the Central District of California notified Pretrial Services in the Eastern District of California that all attempts to locate the defendant have been unsuccessful, which included a home visit. On December 17, 2021, this officer contacted defense counsel, who advised the defendant has broken off contact with their office and they are unable to reach the defendant. All efforts to locate the defendant have been unsuccessful and the defendant's current whereabouts is unknown.

Consequently, the government and counsel for ALMA ADRIANA MORA MADRIGAL agree and ask the Court to find that defendant be considered unavailable because her whereabouts are unknown and her whereabouts cannot be determined by due diligence.

5. Nothing in this stipulation and order shall preclude a finding that other provisions of the

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Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: February 23, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ ANGELA L. SCOTT
ANGELA L. SCOTT
Assistant United States Attorney

Dated: February 23, 2022

/s/ RYAN ROTH per email
authorization
RYAN ROTH
Counsel for Defendant
LEOPOLDO GONZALEZ, JR.

Dated: February 23, 2022

/s/ KELLY BABINEAU per
email authorization
KELLY BABINEAU
Counsel for Defendant
VICTOR MANUEL
VELAZQUEZ

Dated: February 23, 2022

/s/ ETAN ZAITSU per email
authorization
ETAN ZAITSU
Counsel for Defendant
ERASMO ZARATE
SOLORZANO

Dated: February 23, 2022

/s/ CLEMENTE M. JIMENEZ
per email authorization
CLEMENTE M. JIMENEZ
Counsel for Defendant
ESTELA ACEVEDO

1 Dated: February 23, 2022

/s/ JENNIFER MOUZIS per
email authorization

JENNIFER MOUZIS
Counsel for Defendant
DIANA CERVANTES

5 Dated: February 23, 2022

/s/ DINA LEE SANTOS per
email authorization

DINA LEE SANTOS
Counsel for Defendant
JOSE GENARO VARGAS-
RAMIREZ

9 Dated: February 23, 2022

/s/ CHRISTINA ANN-MARIE
DIEDOARDO per email
authorization

CHRISTINA ANN-MARIE
DIEDOARDO
Counsel for Defendant
ALMA ADRIANA MORA
MADRIGAL

15 Dated: February 23, 2022

/s/ JESSE GARCIA per email
authorization

JESSE GARCIA
Counsel for Defendant
HUMBERTO PIMENTEL
CARANZA

19 Dated: February 23, 2022

/s/ TASHA CHALFANT per
email authorization

TASHA CHALFANT
Counsel for Defendant
FERNANDO CARDENAS

23 **ORDER**

24 IT IS SO FOUND AND ORDERED this 24th day of February, 2022.

26 /s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE